

No. 22-6336

ORIGINAL

Supreme Court, U.S.
FILED

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In the
SUPREME COURT OF THE UNITED STATES

James C Tate, Pro Se – PETITIONER

Verses

**United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial
and Service Workers International Union Local 8363 – RESPONDENT**

ON PETITION FOR WRIT OF CERTIORARI TO

FIFTH CIRCUIT COURT OF APPEALS

21-30763

PETITION FOR WRIT OF CERTIORARI

**James C. Tate
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Harvey, Louisiana 70058
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QUESTIONS PRESENTED

1. Did the District Court's discretion deny the petitioner due process?
2. Did the District Court in considering the facts presented in the summary motion ignore the definition of discrimination and petitioner's claims?

List of All Parties

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local 8363

Wayne Gilmore, USW Local 8363 President

Kevin Kennedy, USW Local 8363 Vice President

Reginald Young, USW Local 8363 Financial Secretary

Marty Poche', USW Staff Representative

Sasha Shapiro, Counsel for Respondent

Julie Richard-Spencer, Counsel for Respondent

Valero Services, Inc, Petitioner former employer

Mia Randle, Human Resources Manager, Valero

Jeffrey Bryan, Counsel for Valero

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TABLE OF AUTHORITIES CITED

CASE

James C. Tate v United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
Allied Industrial and Service Workers International Union
Local 8363 Case no. 2:22-cv-00882-ssv-jcw/filings

STATUTES AND RULES

Constitution of the United States: Fifth and Fourteenth Amendments - Due
Process, Equal Protection, Privileges or Immunities Clauses

Civil Rights Act of 1965

Merriam-Webster's Dictionary of Law 1996 p. 142

OTHER - none

Related Cases - none listed

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

(X) For cases from Federal courts:

The opinion of the District Court for the Eastern District of Louisiana appears in Appendix A to the petition.

The opinion of the United States Court of Appeals for the Fifth Circuit No. 21-30763 appears in Appendix B to the petition.

(N/A) For cases from state courts:

This case originated in the U. S. District Court for the Eastern District of Louisiana

JURISDICTION

(X) For cases from federal courts:

The date on which the United States Court of Appeals decided my case was July 14, 2022.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date July 14, 2022 (21-30763) and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to James C. Tate and a copy sent to the United States Court of Appeals for the Fifth Circuit, 600 S. Maestri Place, New Orleans, LA 70130 on October 5, 2022.
SCOTUS - Application No. 22A287

The jurisdiction of the Court is invoked under 28 U. S. C. ~1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The 5th Amendment due process provision

The 14th Amendment equal protection clause, due process provisions, privileges and immunities clause

Civil Right Act of 1964 Title VII

Federal Rules of Civil Procedure (Service of process) Rule 4

STATEMENT OF THE CASE

Tate, *pro se petitioner*, filed originally in the U. S. District Court for the Eastern District of Louisiana on March 13, 2020. Following discovery, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local 8363 also known as USW local 8363 ("Union") filed a motion for summary judgement on April 26, 2021, to the court but failed to e-mail to the petitioner. The petitioner filed a motion to vacate and appealed the summary judgement. The District Court's decision was affirmed by the United States Court of Appeals for the Fifth Circuit on 14 July 2022 case 21-30763.

The petitioner request this Court grant this writ and have the original court to hear the arguments denied under an unanswered summary motion. Per the union affidavit the petitioner was told that the material handed was everything he deserved at a meeting to view and receive evidence collected from Valero. The motion should not have required an answer since in the summary motion submitted by the union agreed with major elements to the petitioner's claims and was improperly submitted in accordance Federal Rules of Civil Procedure. The union's legal representative failed to submit the summary motion as affirmed in the certificate of service via e-mail. The petitioner not an attorney may have misunderstood the correct service in accordance with FRCP Rule 4. The

understanding was that Personal Service required the Clerk's signature and seal when personally handed by any person not a party. Fair process should have been required to afford proper notice, or opportunity to be heard in making the decision to terminate this case. Under questionable submission the court had discretion and ruled on the motion based on the substance of the motion's content. The union did not send the e-mail and have not affirmed that an e-mail was transmitted to the petitioner. All e-mails on or about the date alleged were submitted to the district court. But the union had affirmed that intermingled with other documents and evidence was hand delivered without proper notice at the time of service. Only after the petitioner failed to timely respond did the union provide an affidavit of hand service of the motion. The Appeals court upheld the district court's discretion to rule on to validity of the submission of the summary motion. To simply apply the mechanical applications of the law without reviewing the clear facts is a failure of the court's primary function of justice thus denying substantive due process. If the summary motion is valid then all facts identified in that motion should have been considered. The district court failed common scrutiny when the court failed to recognize any discrimination. The district court ignored that fact a black employee was disciplined for the same actions of the same incident while the white employees were not. In facts available in the summary motion and in the

“answer”, “declaration of facts” submitted by the union that were not properly considered in not deciding this motion. First, the court found no evidence of discrimination despite the fact that only the black employees were disciplined in participation of the same incident and white employees were not for the same actions. The district court incorrectly ruled in summary judgement since the declarations provided by the respondent confirmed the petitioner’s claims. The first exhibit in the summary motion Exhibit 1 item 3, the union president could only identify two members of the minimum five-member committee from 2009 until 2011. In the union’s answer submitted to the district court on April 4, 2020, Case no. 2:22-cv-00882, the union admitted in item 13, “The Union admits that during some periods of Tate’s employment it did not have an actively operating Civil Rights Committee.”. In the Declaration of Fact in the summary motion the union also sited that the petitioner was asked to serve on the required Civil Rights Committee and the petitioner refused. The union also stated the petitioner served as Insurance and benefits Representative often at cost petitioner when the union asked the petitioner to serve on the committee. Then later when the petitioner was no longer serving as insurance rep. the union president called the petitioner a “punk ass bitch” when the union was criticized for not complying with the union contract and not having the Civil Rights Committee. The union president confirmed this in

deposition testimony on February 22, 2021. The union simply did not have a functional Civil Rights Committee. The union vice president stated in deposition testimony that he was the chairman of the Civil Rights committee. But when asked how many members on the committee, he responded There is no other names on the – it's everyone in the plant – depending on what you do". Summary Motion Exhibit 7 p.7

Item 14 of this same answer provided to the district court, "the union lacks sufficient information to admit or deny...allegations. "The union had no interviews with the petitioner or written documents from the petitioner because the union failed to accept or ask the petitioner for any. "I never received a grievance written by Tate" item 5 of exhibit 1 of the summary motion. Again, confirmed with his deposition testimony that he knew of the attempt to submit the written grievance to both the company and the union Financial Secretary on September 5, 2017. Both refused to accept the grievance. The company representative, the shift foreman on duty, apologized for letting come to the plant but he was instructed by the company not to accept the grievance. Then Reginald Young in attendance also refused because he was not sure if he had the authority or if it was proper to accept the grievances. Exhibit 4 p 151 8-20 On or about September 7, 2017, the union attorney denied the petitioners request for representation due to a possible conflict of interest per an intake questionnaire requested and received during discovery.

The union's singular focus was on the 12-word retirement request rather than the baseless unjust disciplinary meeting spawning the forced request. Marty Poche', Union Staff Rep., "I determined that the Union was not likely to succeed in arbitration on Tate's grievance because Tate had chosen to retire." Exhibit 6 p2 Summary Motion. Despite the decades of service, petitioner was just one of majority of terminations of the minority of union members. Minorities accounted for 9 of the 13 terminations since Valero purchased the site. "On September 11, 2017, I sent the Company a request for information about Tate, including, Tate's retirement forms, personnel file, and the investigation leading to his termination/retirement. On October 16, 2017, I received the requested information..." Exhibit 1-D Then later in the notes of the 3rd step grievance meeting, the union president asked for information about the discrepancy of dates of last day worked and the termination date. Mia Randle the company's Human Resources Manager – "Because of the involuntary retirement change." These representations confirm the claims of the petitioners that the disciplinary meeting on September 1, 2017, the petitioner was terminated before the meeting started. Also at this meeting, the union president noted, "The way company wrote the discipline letter...He didn't make the move on the board, another operator did. He was unjustly fired in the Union Position." Exhibit 1-D Confirming the petitioners claim that the petitioner was wrongfully disciplined.

Kevin Kennedy, the union Recording Secretary at the time, was also at the disciplinary meeting stated and questioned, "He didn't retire! He involuntary retired. Which is it?" *(Exhibit 1 of the summary motion)*

The summary motion contained sufficient evidence to provide prima facia case for discrimination if not outright confirmed many of the petitioner's claims. Claims of the petitioners not addressed in the summary motion required scrutiny or at least consideration. For example, if the petitioner did not "make the move" as is the union position, what was the cause for the need for any intervention? After the Kevin Moore input the 2000 units instead of 20000 and all the supervisory personnel missed it. An IT Tech reviewed all inputs from made from the consoles and determined that no inputs were made prior to the rapid increase in temperature that started this disruption. The question not asked by the union, what or who caused the disruption requiring intervention. Although Kevin incorrectly input worsen conditions, it was not the cause of the first rapid temperature change. The union never inquired as to what was the root cause of this incident. Sergei/Sergio, a white union member on duty responsible the unit in question, also participated in this incident and was not disciplined. A highly likely cause was the blocking in of

a transmitter outside. The union never reported that maintenance personnel found a transmitter blocked in that should have been open and in continued operation. The fact that the petitioner's participation was moderating the disruption in accordance with company requirement was not cause for discipline. The petitioner's participation ameliorated the effect of the disruption/upset while each supervisor investigated the cause. Nowhere in any document did the company, Valero, or the union indicate the petitioner cause or made worst the conditions of the upset. The company identified the 75 minutes of lost production. In those 75 minutes a number of individuals participated. In fact, the petitioner diverted spoiled unsaleable product from mixing with and contaminating several millions of dollars of saleable product in storage. On page 9 of the summary motion the union cited, "Because Tate was on final warning, he followed procedures strictly, disregarding direct instructions". The direct instructions were to take short cuts and to hurry to return to normal operations. This case reminds one of Samuel Clemens stories where someone witnessed the following.

A man was poisoned. He became dizzy, tripped, and fell down a well. On the way down he cracked his skull, broke his neck, and had a heart attack and died. When the authorities arrived and ask what had happened. The witness said he tripped and fell.

REASONS FOR GRANTING THE WRIT

According to the union's summary judgement standard on page 13," Where there absence of a genuine issue of fact".

Key facts submitted by the union's summary motion:

The company issued termination notice.

The termination notice rationale box checked identified disciplined for "participation" in the incident.

The union admitted that the petitioner was forceable terminated. *Exhibit 1-D*

The union's stated position was that the petitioner followed company policies and procedures and did not cause or the upset. *Exhibit 1-D*

Five white employees failed to discover the error made by another employee, not the petitioner and one white union employee participated but were not disciplined.

The union admitted that in 2017 it did not have a Civil Rights Committee, per "Answer" from the union. Document 4 filed case 2:22-cv-00882-ssv-jcw 4/4/2022 item 35

The union failed to accept as required by the union's own contract to receive the petitioner's grievance. *Exhibit 1-A Summary Motion p39 "Adjustment of Grievance and Arbitration"*

The union cited that most white employees involved were not union, but Sergio was a white member participated on probation just like Tate. (Exhibit 1-A page 11 of the summary motion); Thus, union failed to comply with Title VII of the Civil Rights Act of 1964: or any other federal or state law or regulation against discrimination.

The union terminated the grievance process without ever interviewing petitioner or questioning the company lack of allegations of wrongdoing.

The union and company agreed that other employees failed to discover the error, not made by Tate but were not disciplined.

The union or the company never identified the root cause of the upset. The most likely cause was a transmitter blocked in that should have been open and in continued operation allegedly found by maintenance.

Union admitted that only Black employees were disciplined for the incident despite the facts that five white supervisory employees failed to discover the same error the petitioner failed to discover. And the outside operator on duty responsible for the equipment was white and participated was not disciplined. No one should be discriminated against on the basis of race and Americans believe in equality but not all Americans have the same definition of equality. The court should have a structure or least a standard definition, especially for the term discrimination.

Again, the union presented that 23-year employee who followed procedure during the incident in question. An employee who voluntarily served as an Emergency Medical Technician, Recue Team Member, Fire Fighter, Union Insurance and Benefits coordinator, Union Election Commissioner, Hurricane Ride Out and Recovery team member for two decades and other positions would not do his job. The union further represented that this employee did not cause the upset. The facts that this employee at the beginning of the disciplinary meeting of September 1, 2017, was presented with a termination notice, final paycheck, separation packet, demanded submission of his access badge and the loss of insurance coverage voluntarily retired without any sense of stress or duress. And the union terminated arbitration arbitrarily.

Information in the original filings and discovery the court may not have considered:

The union primary function is to protect the right of its members via contract enforcement.

The union has never successfully reinstated a black union member upon termination.

The black union membership was less than 12 percent, but as of the petitioner's

termination 9 of the 13 terminations were black or minority.

The union has successfully reinstated white union members for gravely serious and confessed violations resulting in termination.

The union did not cite any statements from other key personnel involved, i.e., the other outside operator on duty (Johnny Verrett), the maintenance personnel examining the equipment suspected of failing was never addressed thus evidence of the incomplete investigation.

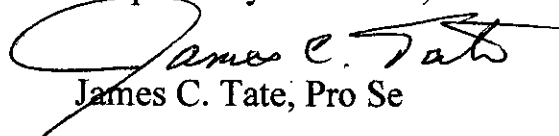
The union under discovery received material from Valero under subpoena and nondisclosure rules relate the safety and non-compliance operations but stated there were no safety issues.

Conclusion

The petition for a writ of certiorari should be granted. Acts of judges should be reviewed when there is a clear or even a possible error in violation of a constitutional right. The judiciary is not infallible even when the mechanisms appear to have been followed. When sufficient facts presented to the district court confirms allegations of the opposing claims, fairness dictates the court must at least hear the case or deny the summary judgement. The district court's error in determining no discrimination alone require further judicial review, in addition to

the questionable submission of the summary motion. Judicial review has recently led to political and social turmoil, this case more than likely will not. To deny to the petitioner's request will deny a basic right to a simple citizen who was disciplined for the same actions of his white co-workers. The petitioner is aware that the Supreme Court's is under no obligation to accept this case on the merits, but the district court should have weighted the merits of facts before it. This court is obligated to its supervisory responsibility and adherence to constitutional principles. The privileges and immunities clause starts with "No state", if no state can't then what complying reason should the federal courts do in denying a expressed right? Therefore, I request this supreme court uphold the provisions of the 5th and 14th Amendments due process provisions and any other applicable statutes and direct the District Court to hear this case.

Respectfully submitted,


James C. Tate, Pro Se

November 28, 2022